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OFFICE OF PETITIONS

In re Application of :
David B. SKURSHA et al. :
Application No. 10/700,207 : **DECISION ON PETITION**
Filed: November 03, 2003 :
Attorney Docket No. 3206 :

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b) to revive the above-identified application filed on May 29, 2008 which petition is also being treated as a petition under 37 CFR 1.181 (no fee) requesting withdrawal of the holding of abandonment in the above-identified application originally .

The petition under 37 C.F.R. 1.181 is **GRANTED** and thereby, the petition to revive under 37 C.F.R. 1.137(b) is **DISMISSED** as moot.

Withdraw the Holding of Abandonment

This application was held abandoned for failure to timely file a reply within the meaning of 37 CFR 1.113 to the Office action of May 23, 2005, which set a ONE (1) MONTH or THIRTY (30) DAYS from the mailing date of such action, whichever was longer, within which to supply the omission or correction in order to avoid abandonment. EXTENSIONS OF THIS TIME PERIOD UNDER 37 CFR 1.136(a), i.e. up to an additional five months, were grantable. A reply, without any extensions of time, was due on or before June 23, 2005.

Petitioner states that a reply was in fact filed September 28, 2005. To support this assertion, petitioner has submitted a copy of a return postcard which acknowledges receipt by the U.S. Patent and Trademark Office (USPTO) on September 28, 2005 of, inter alia, a response to Notice of Abandonment, copies of items (A) and (B) of the 37 CFR 1.131 declaration, a petition to revive under 37 CFR 1.137(b) and a copy of a complete specification-clean version. A copy of the previously submitted reply accompanies the petition. Furthermore, the Application Transmittal form filed November 03, 2003, Item 8, authorized the charging of any additional fees under 37 CFR 1.17, which includes extensions of time under 37 CFR 1.136(a), during the entire pendency of the application to Deposit Account No. 12-2275.

The reply acknowledged as having been received in the USPTO on September 28, 2005 is not of record in the application file and has not to date been located. However, MPEP 503 states that "[a] post card receipt which itemizes and properly identifies the papers which are being filed

serves as prima facie evidence of receipt in the USPTO of all the items listed thereon on the date stamped thereon by the USPTO." Accordingly, it is concluded that the September 28, 2005 reply was timely received in the USPTO on September 28, 2005.

The \$2160 FIVE (5) MONTH extension fee necessary for such reply has been debited as authorized to petitioner's deposit account 12-2275.

In view of the above, the holding of abandonment is hereby withdrawn and the application restored to pending status.

The copy of the reply supplied with the petition will be accepted in place of the reply shown to have been received by the USPTO on September 28, 2005.

Revive, Unintentional Delay

As discussed supra the petition under 37 CFR 1.181 is granted. Accordingly, the petition under the unintentional provisions of 37 CFR 1.137(b) to revive the above-identified application is deemed moot.

Therefore, the \$1500 petition fee debited to petitioner's deposit account September 29, 2005 and \$1540 petition fee debited to petitioner's deposit account May 29, 2008 are unnecessary and will be credited to petitioner's deposit account 12-2275.

This application is being referred to Technology Center AU 2863 for appropriate action in the normal course of business on the reply received with petition.

Telephone inquiries concerning this decision should be directed to K. Reichle at (571) 272-6051.



David Buccer
Petitions Examiner
Office of Petitions